FU LOONG LITHOGRAPHER PTE. LTD.

v.

MUN HEAN REALTY PTE. LTD.

HIGH COURT, SINGAPORE
JOSEPH GRIMBERG JC
[ORIGINATING SUMMONS NO. 219 OF 1986]
27 FEBRUARY 1989

LAND LAW: *Two sale and purchase agreements - Agreement I - Completion date omitted - Not in compliance with Sale of Commercial Properties Act & Rules - Agreement II - Provides for notice to complete to be given - Plaintiffs decline to pay balance of the purchase price - Instead claim for liquidated damages - Whether defence of estoppel and waiver offends the said Act & Rules.*

The plaintiffs of 8 October 1980 concluded an agreement (agreement I) with the defendants for the purchase of premises in Toa Payoh for $1,252,800. The agreement did not comply with the requirements of the Sale of Commercial Properties Act ("the Act") in that no completion date was stipulated. In the event, agreement II was executed by the parties on 25 February 1981. Agreement II by Clause 14(2) provided for notice to complete to be given by the defendants to the plaintiffs before 31 December 1983 and for liquidated damages for delay.

The plaintiffs went into occupation and proceeded to carry on their business. The defendant did not give notice to complete until 2 November 1985. The plaintiffs declined to pay the sum of $125,280 being the balance of the purchase price. Instead they claimed to be entitled to liquidated damages for breach by the defendants to issue a notice to complete on or before 31 December 1983, in accordance with Clause 14(2) of agreement II.

The defendants pleaded *inter alia* estoppel and waiver as their defence to the claim.

Held:

[1] By virtue of s. 5 of the Act and r. 6 of the Rules made under the said Act, Clause 14(2) was inserted in agreement II. The parties were at liberty to agree to vary the stipulated completion date but they could not agree that there should be no stipulated completion date at all.

[2] The doctrines of estoppel and waiver though *prime facie* supportable on evidence are defeated by virtue of the Act and the Rules. The reason being that the doctrines cannot be invoked to render valid a transaction which the legislature has enacted to be invalid. Such a plea if allowed would place the Courts in open conflict with the determination of the legislature.

[Judgment for the plaintiffs.]

Cases referred to:
W.J. Allan & Co. Ltd. v. El Nasr Export and Import Co. [1972] 2 All ER 127
Phoenix Heights Estates (Pte.) Ltd. v. Lee Kay Guan & Anor. [1982] CLJ (Rep) 44
Orchard Twelve Investments Pte. Ltd. v. Golden Bay Realty Pte. Ltd. [1986] 2 MLJ 356
Foo Kee Boo & Anor. v. Ho Lee Investments (Pte.) Ltd. [1988] 3 MLJ 128
Bradshaw v. M'Mullan [1920] 2 IR 47

Legislation referred to:
Sale of Commercial Properties 1979 [Sing], s. 5
Sale of Commercial Properties Rules [Sing], rr 7, 14

Other sources referred to:
Spenser, *Bowyer & Turner on Estoppel by Representation,* 3rd. Edn.
Halsbury's Laws of England, Vol. 16 para. 1515

For the plaintiffs - Cheong Yuen Hee (Andrew Chua with him)
For the defendants - Tan Tee Jim

JUDGMENT

Joseph Grimberg JC:

On 8 October 1980 the plaintiffs concluded an agreement (agreement I) for the purchase by them from the defendants of premises on the mezzanine floor of a flatted factory in Toa Payoh ("the property") for a sum of $1,252,800. The agreed consideration represented a price of $160 per square foot.

Agreement I contained the following provisions, *inter alia*.

(i) Clause 3 provided that the area of the property, described in the Schedule as being of approximately 7830 square feet, was only estimated. In the event of a difference between the estimated and the actual area, there was to be an adjustment of the purchase price on the date of legal completion;

(ii) Clause 16(1) provided that the defendants were to deliver vacant possession of the property within 14 days of the issue of the Temporary Occupation Licence ("TOL"). If TOL was not issued by 28 February 1981, the defendants were to be liable to pay the plaintiffs interest on all monies by then paid by the plaintiffs, at the rate of 9% per annum; and

(iii) Clause 19 provided that completion was to take place 14 days after the receipt by the plaintiffs or their solicitors of notice to complete, issued by the defendants or their solicitors. The clause contained no provision for the payment by the defendants to the plaintiffs of liquidated damages for delay.

Miss Jeannie Ng, an advocate and solicitor, acted for both the plaintiffs and the defendants in the transaction. It was the plaintiffs' intention to take a loan from DBS Finance Ltd. in order to finance the purchase, the loan to be secured by a mortgage over the property. The mortgagees' solicitors drew Miss Ng's attention to the fact that agreement I did not comply with the requirements of the Sale of Commercial Properties Act in that, *inter alia*, no completion date was stipulated. In the event, Miss Ng prepared a second agreement ("agreement II"), which was executed by the parties on 25 February 1981 although it was back-dated to 8 October 1980 (the date of agreement I). It is common ground that the parties intended agreement II to replace agreement I.

Agreement II differed from agreement I in material respects. Firstly, it provided, by Clause 14(2), for notice to complete to be given by or on behalf of the defendants to the plaintiffs or their solicitors on or before 31 December 1983, and for liquidated damages for delay; secondly, it omitted all reference to the defendants having to procure the issue of TOL by a stipulated date; and thirdly, the provisions of Clause 3 of agreement I, to which I have referred above, found no expression in agreement II.

On the day on which agreement II was executed, Miss Ng wrote and delivered a letter to the plaintiffs on behalf of the defendants, which she handed to the plaintiffs' representatives who had gathered in her office with the defendants' representatives for the execution of agreement II. The letter ("25 February letter") was in the following terms:

Dear Sirs,

Re: Purchase of Mezzanine Floor, Mun Hean Building, Singapore.

Please be informed that we have taken our clients Mun Hean Realty Pte. Ltd. instructions and they have agreed on the following.

(a) that the Temporary Occupation Licence date will be scheduled as at 7 May 1981 failing which the vendors will pay you interest at 9% per annum on the 85% or whatever amounts you have already paid to date.

(b) the vendors will not charge you further interest on whatever sums outstanding from you to them after 28 February 1981; and the balance of the purchase price will be disbursed by DBS Finance to the vendors direct.

Please be further informed that should the vendors erect any other building or structure on the said land you will have no legal interest on them whatsoever, save what you have purchased i.e., Mezzanine Floor, Mun Hean Building.

Yours faithfully,

(Signed Jeannie Ng).

In the event, TOL was not issued until 27 July 1981, and in compliance with para. (a) of 25 February letter, the defendants paid the plaintiffs interest amounting to $12,742.

Following issue of TOL, the plaintiffs went into occupation and proceeded to carry on their business there, as printers and lithographers.

On 12 October 1983, a Mr. Tan Han Yong acquired the whole of the issued share capital of the plaintiffs from the plaintiffs' then shareholders for the sum of $540,000. At the time Mr. Tan became the proprietor of the plaintiff company, there remained approximately 10 weeks within which, on the face of it, the defendants were obliged to give the plaintiffs notice to complete in accordance with Clause 14(2) of agreement II.

In the event, notice to complete was not given until 2 December 1985. Miss Ng gave the plaintiffs notice to complete by letter of that date, accompanied by a completion statement by which it was claimed, *inter alia*, that:

(i) a sum of $125,280 was payable to the defendants by way of the balance of the purchase price; and

(ii) a sum of $38,939.20 was due to the defendants, being the value, at $160 per square foot, of an excess area of 143.37 sq feet conveyed to the plaintiffs over the estimated area of the property.

The plaintiffs declined to pay either of the two sums referred to in (i) and (ii). Instead, they claimed to be entitled to liquidated damages for breach by the defendants of their obligation to issue a notice to complete on or before 31 December 1983, in accordance with Clause 14(2) of agreement II. The plaintiffs conceded that they obtained a greater area than they bargained for, to the extent of the excess 143.37 square feet, but contended that, in law, they were not obliged to pay the defendants a sum greater than the consideration provided for in agreement II.

By these proceedings which were begun by originating summons, but which were ordered to be continued as if begun by writ, the plaintiffs claim substantially.

(i) a declaration that they are entitled to liquidated damages amounting to $184,587.86, and interest;

(ii) an order that the purchase price of the property be abated by that amount;

(iii) interest on the liquidated damages claimed; and

(iv) an order that the sale and purchase of the property be completed on the basis that the defendants do make payment to the plaintiffs of $59,307.56, being the amount alleged to be due to the plaintiffs by way of liquidated damages after setting off the balance of the purchase price payable to the defendants.

The defendants deny that the plaintiffs are entitled to liquidated damages. Originally, they counterclaimed, in addition to the balance of the purchase price amounting to $125,280, a sum of $38,939.20 representing the value, at $160 per square foot, of the excess area acquired by the plaintiffs. On the penultimate day of the trial the claim for compensation for the value of the excess area was abandoned.

There is no dispute as to the calculation of the amount claimed for liquidated damages, if due.

The defendants deny that they are liable to the plaintiffs for liquidated damages on a number of pleaded grounds. They are:

(i) that the plaintiffs were estopped by their representations and/or conduct "from saying that the sale and purchase should have been completed on 31 December 1983 or from asserting that the defendants wrongfully refused to complete" by that date; alternatively

(ii) that the plaintiffs had waived Clause 14(2) of agreement II which provided 31 December 1983 as completion date; or in the further alternative

(iii) that by reason of the events which took place, a new agreement between the parties must be implied whereby completion was extended to a date to be notified by the plaintiffs to the defendants, within a reasonable time of 31 December 1983. No such notice had been given.

Mr. Tan Han Yong, a director of the plaintiffs, was their only witness. He had affirmed an affidavit in the proceedings, and he said in evidence that he stood by the contents of it. He agreed, under cross-examination, that when he acquired the plaintiff company in October 1983, there were only about two months left for the defendants to issue the notice to complete in accordance with Clause 14(2) of agreement II.

He was aware, he said, that under Clause 14(2) of agreement II the defendants were obliged to issue a notice to complete by 31 December 1983 and that failure to complete resulted in the defendants becoming liable for liquidated damages. He had telephoned Miss Ng about the notice to complete and she had promised to look into the matter. He had left the matter to her, and between December 1983 and December 1985 he had not requested the defendants to give notice to complete. Nor had he taken any steps to ensure that they did so.

Mr. Tan confirmed that he knew of 25 February letter when he purchased the plaintiff company in October 1983. By that time TOL had already been issued, so there was no need for him to enquire as to the meaning of para. (a) of the letter. He was aware, also, that the defendants had paid the plaintiffs a sum of about $12,000 in accordance with para. (b). He did not pay any particular attention to the final paragraph of the letter, and nobody explained its significance to him.

Mr. Tan said that he did not know, when he acquired the plaintiff company, that the defendants intended to construct another phase of their project on the same site and he was not able to say whether Mr. Mok Wing Kee, a director of the defendants, told Mr. William Tan, then of the plaintiffs, that notice to complete could not and would not be given by 31 December 1983, and that Mr. William Tan accepted this.

Affidavits were affirmed or sworn by three persons on behalf of the defendants. They were William Tan Boon Toon, at the time of execution of Agreements I and II and for some time thereafter an executive director of the plaintiffs; Mr. Mok Wing Kee, the managing director of the defendants; and Miss Jeannie Ng who, as I have said, acted on behalf of both the plaintiffs and the defendants in the transaction. She withdrew from acting in or about February 1986 when it appeared that the dispute between the parties was heading for the Courts.

Mr. William Tan, Mr. Mok and Miss Ng all gave evidence, confirming the truthfulness of the contents of their respective affidavits, and supplementing their affidavit evidence. In a nutshell, the effect of their evidence was that agreement I was concluded as a result of negotiations between the plaintiffs and the defendants conducted on the plaintiffs' behalf substantially by William Tan. A date for legal completion was never discussed, and was not inserted in agreement I because, by virtue of Clause 16(1), the plaintiffs were to get possession, which was all the plaintiffs were interested in, by 28 February 1981, in default of which the plaintiffs were to receive interest on monies already paid under the agreement. Furthermore, the defendants were then contemplating a second phase of their development on the site of the property. It was not possible to predict when both lots would be amalgamated for the purposes of procuring individual titles, and hence to decide on a date for completion. Clause 4(2) had been inserted into agreement I, by which the plaintiffs acknowledged that they had "no claims or objections" to the erection of further buildings on the site.

After agreement I was executed had come the realisation that it did not comply with the requirements of the Sale of Commercial Properties Act, and the Rules made under it (respectively "the Act" and "the Rules"). Miss Ng telephoned the plaintiffs and defendants and explained that another agreement would have to be executed, to replace agreement I. In the event, agreement II was executed on 25 February 1981. It contained, as Clause 14(2), provision for notice to complete to be given on or before 31 December 1983 but this date was chosen and inserted by Miss Ng, arbitrarily and entirely upon her own initiative, in order to comply with the requirements of the Act, and for no other reason. The date was of no significance at all to either the plaintiffs or the defendants, the plaintiffs' often stated pre-occupation having been to obtain physical possession as soon as possible, in order to carry on their business on the property. Hence, Miss Ng had prepared and signed her letter dated 25 February 1981, by which the defendants were to procure the issue of TOL by 7 May 1981 (pushed back some 3 months from the date provided in agreement I) or pay interest in default.

I concluded that Messrs Mok and Tan, and Miss Ng, were totally honest in their account of the events surrounding the execution of Agreements I and II; and in so far as Mr. Mok and Miss Ng were concerned, the events which occurred between the execution of agreement II, and the period immediately before the writ was issued in February 1986.

I turn to consider whether the evidence *prima facie* supports a plea of promissory estoppel, and of waiver, and if it does whether or not such plea defeats the plaintiffs' claim to liquidated damages having regard to the provisions of the Act and the Rules, or for any other reason.

The editors of *Spenser, Bowyer & Turner on Estoppel by Representation* (3rd Edn.) consider the following to be a satisfactory definition of estoppel by representation:

> where one person ("the representor") has made a representation to another person ("the representee") in words or by acts or conduct, or (being under a duty to the representee to speak or act) by silence or inaction, with the intention (actual or presumptive), and with the result, of inducing the representee on the faith of such representation to alter his position to his detriment, the representor, in any litigation which may afterwards take place between him and the representee, is estopped, as against the representee, from making, or attempting to establish by evidence, any averment substantially at variance with his former representation, if the representee at the proper time, and in the proper manner, objects thereto.

The evidence of Mr. Mok Wing Kee, Mr. William Tan and Miss Jeannie Ng (more so that of Miss Ng) established, in my judgment, that the plaintiffs represented to the defendants by their words, acts or conduct, that the date for legal completion of the plaintiffs' purchase was inconsequential, that the plaintiffs would not hold the defendants to a completion date, so long as the plaintiffs were let into possession as soon as possible, and that the arrangement between the parties provided for compensation to the plaintiffs if the defendants defaulted in securing TOL by the agreed date.

It was those considerations which led to the inclusion of Clause 4(2) in agreement I, and subsequently to the writing of 25 February letter.

The following is a passage from the evidence of Mr. Mok Wing Kee, the defendants' managing director, in cross examination:

> Q. When you signed the second agreement on behalf of the defendants, the date in Clause 14(2) had already been inserted?
>
> A. Yes.
>
> Q. Did she' (Miss Ng) explain the significance of that clause to you or the plaintiffs' officers?
>
> A. Yes.
>
> Q. After explaining, you signed?
>
> A. Yes.
>
> Q. Did you say anything to her when she explained it to you?
>
> A. No. It was our understanding that the date was inserted to assist the plaintiffs to obtain a loan from the bank.
>
> Q. Did any of the plaintiffs' officers say anything after the clause was explained?
>
> A. No. Nobody said anything.
>
> Q. And they also signed?
>
> A. Yes.

I quote passages from the evidence of Miss Ng, in cross-examination:

> Q. We have the evidence of Mok and William Tan that when you inserted the date of completion 31 December 1983 in agreement II, you explained its significance to the parties?
>
> A. I informed them all that there was in that Clause 14(2) provision for damages for late completion, but at all times both vendors and purchasers did not put any significance on this clause. The date was put in, and the clause was drafted, for the benefit of the purchasers who had to follow this format in order to obtain a loan from mortgagees.

Q. After you explained to them, nobody said anything, and they signed?

A. Yes, William Tan had "We only want TOL," or words to that effect, both in October 1980 and February 1981.

Again:

Q. When you sent the completion statement (A55) to the plaintiffs on 2 November 1985, it is obvious that you did not direct your attention to liquidated damages?

A. Yes, because the question never arose. Neither purchaser nor vendor placed any reliance on completion date. It was not significant to them. When I sent A55 I believed that no question of liquidated damages arose.

Q. What was your reaction to the plaintiffs' solicitors' letter A61 (in which reference was made to liquidated damages)?

A. I was shocked, and believed that plaintiffs solicitors did not understand what the intention of the parties was when Agreements I and II were concluded.

And again:

Q. I put it to you that the reason why you did not say (in the correspondence immediately before the institution of proceedings) that the defendants never intended to rely on the completion date, was because there was no such understanding?

A. That is not true. The vendors were not obliged to pay interest for late possession, but they did. They could not be penalised twice, i.e., for late possession and late completion as well.

Q. Why not, if it's written into the agreement?

A. Because both parties understood that there would be no reliance on completion date. They would not rely on Clause 14(2) at any future date.

Q. Did the plaintiffs at any time say words to the effect: "We waive Clause 14."?

A. No, they did not, but they told me that the date was of no significance, they were only interested in possession, and they were happy with the interest paid for late possession.

Clearly, Miss Ng had an interest in giving evidence along these lines, but I was entirely satisfied as to her truthfulness, which is borne out by the fact that, but for the requirements of the Act, agreement II containing Clause 14(2) would not have been necessary, and the parties would have proceeded upon the footing of agreement I, which contained no date for completion at all. Miss Ng was the solicitor for both the plaintiffs and the defendants, she was in the picture from the start, she referred to her file while giving evidence and clearly had the best recollection of what transpired between the parties.

Mr. William Tan said in examination-in-chief:

Q. Why was there no discussion or query concerning 31 December 1983?

A. We were very anxious to obtain possession of the premises, to start our business. There was no discussion about date for legal completion. We were much more concerned about TOL because we wanted physical possession.

And in cross-examination:

Q. As far as you remember, you didn't on behalf of the plaintiffs raise any query about the date 31 December 1983?

A. We did not.

Q. Was your attention drawn to Clause 14(2) when you went to sign agreement II?

A. As far as I can remember, we were told that there had to be a date there to comply with the requirements of the mortgagee's solicitors.

I conclude, on the evidence, that the plaintiffs' conduct gave rise, *prima facie*, to a promise or assurance on their part that they would not hold the defendants to the completion date of 31 December 1983 stipulated by Clause 14(2) of agreement II.

Were the defendants, as a consequence of that promise or assurance, induced to alter their position to their detriment?

The reason why a date for completion had been omitted from agreement I was because Phase II of the defendants' project was contemplated and there was no telling, in October 1980, when it would be possible to amalgamate the lots upon which phases I and II were to be constructed for the purposes of procuring individual titles. That remained the position in February 1981. By their promise or assurance that 31 December 1983 completion date would not bind the defendants, the plaintiffs induced the defendants to act upon it and to alter their position by proceeding upon the basis that nothing stood in the way of Phase II, in the form of a deadline for giving the plaintiffs title to the property. Mr. Mok Wing Kee said:

> If the plaintiffs had insisted on compliance with the legal completion date of 31 December 1983, we may or may not have proceeded with the extension (i.e., Phase II). Had they insisted, we would have had to see if we could meet the deadline. We decided to proceed with Phase II because the plaintiffs had already agreed that the completion date of 31 December 1983 was of no importance.

In the event, the defendants embarked in earnest on Phase II at the end of 1981, and it was ultimately completed at the end of 1985.

The evidence, therefore, supports the proposition that the defendants, acting upon the plaintiffs' assurance or promise, altered their position.

There seems to be a divergence of judicial opinion as to whether the alteration in the position of the party seeking to set up estoppel need result in detriment to him. Lord Denning, in *W.J. Allan & Co. Ltd. v. El Nasr Export and Import Co.* [1972] 2 All ER 127 appeared not to regard detriment as an essential element of promissory estoppel. He said:

> A seller may accept a less sum for his goods than the contracted price, thus inducing (his buyer) to believe that he will not enforce payment of the balance: see *Central London Property Trust Limited v. High Trees House Ltd.* and *D & C Builders Ltd. v. Rees*. In none of these cases does the party who acts on the belief suffer any detriment. It is not a detriment, but a benefit to him to have an extension of time or to pay less, or as the case may be. Nevertheless, he has conducted his affairs on the basis that he has had that benefit and it would not be equitable now to deprive him of it.

Spenser, Bowyer & Turner contains this passage (at p. 392) following a review of the authorities:

> If the meaning of "detriment", where that term is used in estoppel cases, be subjected to precise examination ... it is clear that detriment means injustice to the promisee which would result if the promisor were allowed to recede from his promise.

I proceed upon the basis that "detriment" bears that meaning, and find that the defendants in the present case altered their position to their detriment in the sense that, acting upon the plaintiffs' assurance or promise, they embarked upon Phase II of this project on the basis that they had the benefit of not being held to 31 December 1983 completion date.

The defendants' first alternative defence to the plaintiffs' claim for liquidated damages, namely that the plaintiffs waived performance by the defendants of Clause 14(2) of agreement II, is closely related to the defence of promissory estoppel.

Whereas the estoppel defence depended entirely on the conduct of those representing the plaintiffs in negotiations with the defendants leading to the conclusion of Agreements I and II and the writing by Miss Ng of 25 February letter, the waiver defence requires scrutiny of the evidence of Mr. Tan Han Yong who, as I have said, acquired the plaintiff company on 12 October 1983, some 10 weeks before the date provided for completion by Clause 14(2) of agreement II.

Mr. Tan Han Yong impressed me as a hard-headed businessman who carefully informed himself of, and understood, the terms and effect of agreement II and 25 February letter, when he purchased the plaintiff company in October 1983. He knew that completion was due on or before 31 December 1983, but that date came and went, and I find as a fact that he did nothing about it. I do not believe that he telephoned Miss Ng, reminded her about completion and left it all to her, and I accept Miss Ng's categorical denial that Mr. Tan did nothing of the sort.

I conclude that the reason for Mr. Tan's inaction was that he knew that the plaintiff company had received compensation, in the form of interest, for having been let into possession later than it should have been, and that his company had no pressing need for title to be issued. I do not forget that the obtaining of legal title by the purchasers of real estate is a matter of considerable importance, but I find that the contractual requirement for a notice to complete to be given by the defendants on or before 31 December 1983 was of no practical interest to Mr. Tan and that, on behalf of the plaintiff company, he forebore from insisting on its performance, the company having been let into possession some 29 months before completion was contractually due.

The requirement for completion was only pressed by the plaintiffs two years after the completion date stipulated by Clause 14(2), after Miss Ng gave notice of completion on behalf of the defendants in December 1985. The claim, I find, was raised as a matter of commercial opportunism on the part of the plaintiffs. In my judgment, apart from estoppel, the plaintiffs *prima facie* waived their right to require performance by the defendants of Clause 14(2).

Phoenix Heights Estates (Pte) Ltd. v. Lee Kay Guan & Anor. [1982] CLJ (Rep) 44 and *Orchard Twelve Investments Pte. Ltd. v. Golden Bay Realty Pte. Ltd.* [1986] 2 MLJ 356, both relied on by the plaintiffs in support of their claim for liquidated damages, are clearly distinguishable cases. In neither of those cases was estoppel or waiver raised.

However, it was said by Counsel, on behalf of the plaintiffs in this case, that it is not open to the defendants to raise estoppel (and by this I understood him to mean waiver as well) against the plaintiffs' claim under Clause 14(2) of agreement II because Parliament has, as a matter of policy, enacted by means of the Act, statutory provisions for the protection of purchasers.

Section 5 of the Act is in the following terms:

> 5. (1) Every agreement for the sale and purchase of a commercial property shall contain such terms and conditions of sale as may be prescribed by rules made under this Act.
>
> (2) Any term or condition of sale in an agreement of sale and purchase referred to in subsection (1) which is inconsistent with the terms and conditions of sale prescribed by rules made under this Act shall to the extent of the inconsistency be null and void.

Rules 6 and 7 provide as follows:

> 6. The agreement for the sale of any commercial property to which the Act applies shall be in the Form B set out in the Schedule to these Rules.
>
> 7. No amendment, deletion or alteration to the option or the agreement for sale referred to in rr. 5 and 6 shall be made except with the approval in writing of the Controller of Housing.

Counsel submitted that the defendants could not be heard to say to the plaintiffs, in the light of these provisions: "By your representations you are estopped from relying on Clause 14(2)" because the net effect of that would be to defeat the intentions of Parliament, and to give rise to an illegal contract and/or a term which, by virtue of s. 5, is void and unenforceable.

Clause 14(2) of agreement II was precisely in the terms required by r. 14 of the Rules. The Rules do not stipulate a formula by which the date for the giving of notice to complete is to be fixed. That is left to the parties, and in this instance the date 31 December 1983 was inserted by Miss Ng on behalf of the vendors and purchasers, for the reasons I have referred to. It was open to the parties to agree on a date, any date, as the agreed date. But I do not think that it was open to them, in effect, not to stipulate a completion date at all, and it is at this point that the defendants' case runs into difficulties. It is true to say that r. 7 is directed to the form of agreements for sale between vendors and purchasers of commercial property, and that the Rule is not offended if the parties agree to a stipulated completion date being varied, any more than that it would be offended if, for example, they agreed to a variation in the purchase price. However, what they cannot do is agree that there should be no stipulated completion date at all.

The same can be said of 25 February letter. That document, in so far as it purported to vary agreement II, clearly ran foul of both s. 5 and r. 7.

I therefore conclude that whereas the pleas of estoppel and waiver are *prima facie* supportable on the evidence, and would otherwise have succeeded, they are defeated by virtue of the Act and the Rules, and by the wider considerations of public policy. The provisions of the Act are different from those to be found in the Housing Developers (Control and Licensing) Act and the Rules made under it, which fell to be considered in *Foo Kee Boo & Anor. v. Ho Lee Investments (Pte) Ltd.* [1988] 3 MLJ 128. The latter Act, for one thing, does not contain a section equivalent to s. 5.

I am also obliged to reject the plea to estoppel, and the related plea of waiver, because it is a general principle that the doctrine of estoppel "cannot be invoked to render valid a transaction which the legislature has, on grounds of general public policy, enacted ... to be invalid ..." *Halsbury's Laws of England,* Vol. 16, para. 1515.

In *Bradshaw v. M'Mullan* [1920] 2 IR 47, the House of Lords held that a contract was void as being contrary to a provision of the Local Government (Ireland) Act 1898. The defendant relied upon certain events as giving rise to an estoppel. The plea was rejected. In the course of his speech, Lord Shaw of Dunfermline said:

> Further, my Lords, I desire to make this observation. I do not see my way to sanction the application of this specific plea of *res judicata,* or the more general plea of estoppel, to any transaction such as the present, which is in plain defiance of statutory injunction. Such a plea, if allowed, would place the Courts of the country in open conflict with the determination of the Legislature.

I turn finally to the defendants' third plea, namely that the facts gave rise to an implied new agreement "whereunder the completion" of agreement II, "was extended beyond 31 December 1983 and until the plaintiffs had given a notice to the defendants to complete the said agreement within a reasonable time. In the event, no such notice was given by the plaintiffs to the defendants.".

I am unable to agree that the evidence merits such implication, and I am obliged to reject this third plea.

We are left with agreement II, which the solicitor acting for both parties drew up in order to ensure that the transaction was governed by an agreement which conformed with statute. The need for agreement II was explained to those representing the plaintiffs and defendants, and it was duly executed by them. Clause 14(2) cannot in law, for the reasons I have set out, be said to have been waived; nor are the plaintiffs estopped from setting it up.

In the event, and regrettably I regard this result to be inconsonant with the merits of the case, there will be judgment as follows:

(a) a declaration that, pursuant to the agreement between the parties dated 8 October 1980 (agreement II), liquidated damages as payable by the defendants to the plaintiffs in the sum of $184,587.86;

(b) an order that the purchase price for the property be abated by that sum of $184,587.86;

(c) consequentially, an order that the defendants do pay the plaintiffs interest on the sum of $184,587.86 at the rate of 9 per cent per annum from 18 December 1985 until judgment or payment;

(d) an order that the defendants do complete the sale and purchase of the property; do execute a transfer and restriction in favour of the plaintiffs forthwith together with a total discharge of mortgage over the property; and do make payment to the plaintiffs of the sum of $59,307.86;

(e) an order that the plaintiffs' taxed costs of the claim be paid by the defendants; and

(f) an order that the defendants' counterclaim be dismissed with costs.

Also found at [1989] 2 CLJ 296